

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

Teresa Lorenz,

Plaintiff,

v.

ORDER

Civil No. 15-3042 ADM/TNL

The Bank of New York Mellon, Southstar
Funding LLC, and EMC Mortgage
Corporation,

Defendants.

Teresa Lorenz, pro se.

This matter is before the undersigned United States District Court Judge, sua sponte, to reconsider the October 3, 2016 Order [Docket No. 105] denying Plaintiff Teresa Lorenz's ("Lorenz") Motion for Extension of Time [Docket No. 104]. For the reasons set forth below, the October 3, 2016 Order is vacated, and Lorenz's Motion for Extension of Time is granted.

On August 22, 2016, Defendant The Bank of New York Mellon's Motion for Summary Judgment [Docket No. 65] and Defendant EMC Mortgage Corporation's Motion to Dismiss [Docket No. 72] were granted.¹ See Mem. Opinion Order [Docket No. 98]. On September 22, 2016, Lorenz filed a Notice of Appeal to the 8th Circuit [Docket No. 100], and a case number was assigned the following day. See Docket No. 103.

Lorenz's appeal was not timely. On September 30, 2016, Lorenz filed a Motion for Extension of Time. The Court, believing that it lacked jurisdiction, denied the motion. See Oct. 3, 2016 Order. Federal Rule of Appellate Procedure 4(a)(5)(A), however, provides that the

¹ Defendant Southstar Funding LLC had no real interest in the outcome of this action.

district court may extend the time to file a notice of appeal upon a showing of good cause or excusable neglect.

Under Rule 4(a)(5)(A), four factors are to be considered in deciding whether excusable neglect or good cause for an extension exists: “(1) the danger of prejudice to the non-moving party; (2) the length of delay and its potential impact on judicial proceedings; (3) the reason for the delay, including whether it was within the reasonable control of the movant; and (4) whether the movant acted in good faith.” Treasurer, Trs. of Drury Indus., Inc. Health Care Plan & Trust v. Goding, 692 F.3d 888, 893 (8th Cir. 2012). The factors do not carry equal weight; “the excuse given for the late filing must have the greatest import.” Lowry v. McDonnell Douglas Corp., 211 F.3d 457, 463 (8th Cir. 2000). “With regard to determining whether a party’s neglect of a deadline is excusable, the Supreme Court has held the ‘the determination is at bottom an equitable one, taking account of all relevant circumstances surrounding the party’s omission.’” Gibbons v. United States, 317 F.3d 852, 854 (8th Cir. 2003) (quoting Pioneer Inv. Servs. Co. v. Brunswick Assocs. Ltd. P’ship, 507 U.S. 380, 395 (1993)).

Lorenz has demonstrated sufficient cause to grant her an extension to appeal the August 22, 2016 Judgment [Docket No. 99]. Any prejudice the Defendants will incur is minimal and the delay stemming from extending the appeal deadline for Lorenz is also slight, considering Lorenz has already submitted her notice of appeal to the Eighth Circuit. Lorenz states that the delay was caused by her own calculation error and that she was unaware that her September 22, 2016 appeal was untimely until she received a letter from the Eighth Circuit. In a different context, this may not be a sufficient excuse. Lorenz, however, is a pro se plaintiff who filed her request for an extension of time a short time after receiving notice that her appeal was untimely. In a

different context, such excuses may not justify an extension; however “Congress plainly contemplated that the courts would be permitted, where appropriate, to accept late filings caused by inadvertence, mistake or carelessness.” Pioneer, 507 U.S. at 388. Under these circumstances, an extension of time to file an appeal is warranted.

Based upon the foregoing, and all the files, records, and proceedings herein, **IT IS HEREBY ORDERED** that Plaintiff Teresa Lorenz’s Motion for Extension of Time [Docket No. 104] is **GRANTED**. The October 3, 2016 Order [Docket No. 105] is **VACATED**. Lorenz shall have until October 20, 2016 to file an appeal to the Eighth Circuit Court of Appeals.

BY THE COURT:

s/Ann D. Montgomery
ANN D. MONTGOMERY
U.S. DISTRICT JUDGE

Dated: October 12, 2016.